



February 23, 2007

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## SENATE BILL No. 529

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DIGEST OF SB 529 (Updated February 20, 2007 5:49 pm - DI 101)

**Citations Affected:** IC 8-1; IC 32-24; noncode.

**Synopsis:** Pipeline construction standards. Establishes construction standards for the construction of any segment of interstate pipeline on privately owned land in Indiana. Provides that the standards are not binding on affected landowners. Requires the pipeline safety division (division) of the utility regulatory commission (IURC) to designate one or more employees as project coordinators for each proposed or ongoing pipeline project. Requires the division to make certain information on each pipeline project available on the IURC's web site. Provides that a public utility or a pipeline company that seeks to acquire land by eminent domain may not enter on the land for survey purposes unless the public utility or pipeline company: (1) sends notice by certified mail to the landowner of the public utility's or pipeline company's intention to enter the land for survey purposes; or (2) receives the landowner's signed consent to enter the land to perform the proposed survey.

**Effective:** Upon passage.

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**Jackman, Lawson C, Bray**

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January 23, 2007, read first time and referred to Committee on Utilities & Regulatory Affairs.

February 22, 2007, amended, reported favorably — Do Pass.

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SB 529—LS 7827/DI 101+



February 23, 2007

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

## SENATE BILL No. 529

A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 8-1-22.6 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
3 UPON PASSAGE]:

4 **Chapter 22.6. Pipeline Construction Standards**

5 **Sec. 1. (a) This chapter applies to the construction of any**  
6 **segment of an interstate pipeline on privately owned land in**  
7 **Indiana.**

8 **(b) Except for the standards set forth in section 11 of this**  
9 **chapter, this chapter does not apply to construction activities that**  
10 **occur entirely on:**

- 11 (1) a public right-of-way;  
12 (2) a railroad right-of-way; or  
13 (3) publicly owned land.

14 **Sec. 2. As used in this chapter, "affected landowner" means an**  
15 **affected landowner (as defined in 18 CFR 157.6(d)(2)) who owns:**

- 16 (1) real property; or  
17 (2) an interest in real property;

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1 in Indiana.

2 Sec. 3. As used in this chapter, "agricultural land" means land  
3 that is:

- 4 (1) assessed as agricultural land for property taxes purposes;
- 5 (2) zoned or otherwise designated as agricultural land;
- 6 (3) used for growing crops or raising livestock; or
- 7 (4) reserved for conservation under a government program.

8 Sec. 4. As used in this chapter, "commission" refers to the  
9 Indiana utility regulatory commission created by IC 8-1-1-2.

10 Sec. 5. (a) "Construction" or "construction activity" means the  
11 physical work involved in the construction, reconstruction,  
12 improvement, maintenance, or extension of a pipeline project.

13 (b) The term includes the following:

- 14 (1) The preparation of the construction site.
- 15 (2) Disassembling and removing a structure.
- 16 (3) Related work.

17 Sec. 6. As used in this chapter, "pipeline" means a pipeline (as  
18 defined in IC 8-1-22.5-1(c)) that crosses or is located in:

- 19 (1) Indiana; and
- 20 (2) one (1) or more other states.

21 Sec. 7. (a) As used in this chapter, "pipeline company " means  
22 a person (as defined in IC 8-1-22.5-1(e)) that:

- 23 (1) constructs; or
- 24 (2) proposes to construct;

25 a pipeline.

26 (b) The term includes any:

- 27 (1) employee;
- 28 (2) agent;
- 29 (3) contractor;
- 30 (4) subcontractor;
- 31 (5) or other person;

32 that is employed by, or acts on behalf of, a pipeline company.

33 Sec. 8. Except as otherwise provided in this chapter, and to the  
34 extent not preempted by federal law, a pipeline company shall  
35 adhere to the standards set forth in this chapter in constructing a  
36 pipeline, or any segment of a pipeline, in Indiana.

37 Sec. 9. (a) A pipeline company shall bury the pipeline at the  
38 following minimum depths:

- 39 (1) Except as provided in subdivision (3), with at least five (5)  
40 feet of top cover, in a location in which the pipeline crosses  
41 any of the following types of land:

- 42 (A) Land that is used for crops.

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- 1 (B) Land that:  
 2 (i) is used as pasture land; and  
 3 (ii) is comprised of soils that are classified by the United  
 4 States Department of Agriculture as prime soils.  
 5 (C) Land that:  
 6 (i) is used as other agricultural land; and  
 7 (ii) is comprised of soils that are classified by the United  
 8 States Department of Agriculture as prime soils.  
 9 (2) Except as provided in subdivision (3), with at least three  
 10 (3) feet of top cover, in a location in which the pipeline crosses  
 11 any of the following types of land:  
 12 (A) Land that:  
 13 (i) is used as pasture land; and  
 14 (ii) is not comprised of soils that are classified by the  
 15 United States Department of Agriculture as prime soils.  
 16 (B) Land that:  
 17 (i) is used as other agricultural land; and  
 18 (ii) is not comprised of soils that are classified by the  
 19 United States Department of Agriculture as prime soils.  
 20 (C) Land that is wooded or brushy land.  
 21 (D) All other classifications of land.  
 22 (3) With at least thirty (30) inches of top cover, in an area in  
 23 which:  
 24 (A) rock in its natural formation; or  
 25 (B) a continuous strata of gravel exceeding two hundred  
 26 (200) feet in length;  
 27 is encountered.  
 28 (b) If weights are required to keep a pipeline or segment of  
 29 pipeline in place, the pipeline company shall bury the pipeline at  
 30 the depth necessary to maintain the depth of top cover above the  
 31 weights that is required under subsection (a) for the particular  
 32 type of land on which the weights are located.  
 33 (c) If a pipeline or segment of pipeline crosses agricultural land  
 34 that is subject to erosion, the pipeline company shall patrol the  
 35 pipeline right-of-way with reasonable frequency to detect erosion  
 36 of the top cover. Except as provided in subsection (a)(3), the  
 37 pipeline company shall not knowingly allow the depth of the top  
 38 cover to be less than thirty-six (36) inches as a result of natural  
 39 erosion. In addition, any soil conservation practices used on  
 40 agricultural land before the construction of the pipeline, including  
 41 terraces and grassed waterways, shall be restored by the pipeline  
 42 company to their preconstruction condition.

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1       **Sec. 10. (a)** In performing any excavation in connection with the  
 2 construction or burial of a pipeline, a pipeline company shall  
 3 segregate any topsoil removed during the excavation from any  
 4 subsoil materials removed during the excavation, as prescribed by  
 5 this section.

6       **(b)** The pipeline company shall strip the actual depth of the  
 7 topsoil, not to exceed thirty-six (36) inches, from:

- 8           (1) the area to be excavated above the pipeline; and
- 9           (2) the adjacent subsoil storage area.

10       The topsoil removed must be stored in a windrow parallel to the  
 11 pipeline trench in such a manner that it will not become intermixed  
 12 with subsoil materials.

13       **(c)** Any subsoil materials that are removed from the pipeline  
 14 trench during the excavation must be placed in a windrow that is:

- 15           (1) parallel to the pipeline trench; and
- 16           (2) separate from the topsoil windrow described in subsection  
 17 (b).

18       **(d)** Subject to subsection (e), in backfilling the pipeline trench,  
 19 the pipeline company shall place the stockpiled subsoil material  
 20 described in subsection (c) into the trench before replacing the  
 21 stockpiled topsoil described in subsection (b).

22       **(e)** Before replacing the topsoil, the pipeline company shall  
 23 remove all rocks greater than three (3) inches in any dimension  
 24 from:

- 25           (1) the surface of all subsoil; and
- 26           (2) all subsoil that is replaced in the trench.

27       In replacing the topsoil, the pipeline company shall remove all  
 28 rocks greater than three (3) inches in any dimension from the  
 29 topsoil.

30       **(f)** This subsection applies whenever a pipeline company:

- 31           (1) performs an excavation in connection with the  
 32 construction or burial of a pipeline, as described in subsection  
 33 (a); or
- 34           (2) excavates land for a road, stream, drainage ditch, or other  
 35 crossing.

36       After performing the excavation, the pipeline company shall  
 37 replace the topsoil in such a manner that after settling occurs, the  
 38 topsoil's original depth and contour will be restored.

39       **Sec. 11. (a)** A pipeline company shall take all reasonable actions  
 40 necessary to prevent or remedy damage to underground drainage  
 41 tiles during the construction of a pipeline, as prescribed by this  
 42 section.

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(b) Before installing any pipeline, the pipeline company shall make a reasonable effort to locate any tile lines within the pipeline's right-of-way. Any tile lines identified under this subsection shall be staked or flagged before construction.

(c) In installing a pipeline, the pipeline company shall maintain a minimum of one (1) foot of separation between the pipeline and any tile line that is crossed by the pipeline, regardless of whether the pipeline passes over or under the tile line. The pipeline company shall ensure that the tile line's original alignment and gradient are maintained.

(d) Any tile line that is damaged, cut, or removed during construction activities shall be staked or flagged so that the stakes or flags:

(1) are visibly distinct from the preconstruction markings made under subsection (b); and

(2) remain visible until permanent repairs are made.

(e) If a tile line that contains flowing water is damaged, the pipeline company shall immediately repair the tile line. A repair made under this subsection may be temporary in nature if a permanent repair cannot be made immediately. However, the pipeline company shall make permanent repairs to the tile line as soon as is reasonably possible.

(f) Before completing any permanent tile line repairs, the pipeline company shall:

(1) probe; or

(2) examine by other suitable means;

all tile lines located within any construction sites or other work areas. The pipeline company shall probe or examine the tile lines on both sides of the pipeline trench for the entire length of the tile lines to determine whether any tile has been damaged by vehicular traffic or construction equipment. If the pipeline company discovers damaged tile lines, the pipeline company shall repair the damaged tile lines so that the tile lines operate as well after construction activities are complete as they did before construction began.

(g) The pipeline company is responsible for:

(1) installing any additional drainage tiles; and

(2) taking any additional drainage measures;

that are necessary to properly drain wet areas on the temporary and permanent easements acquired by the pipeline company in connection with the construction and maintenance of a pipeline across an affected landowner's property.

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(h) The pipeline company shall make any necessary permanent repairs to damaged tile lines on an affected landowner's property not later than fourteen (14) days after the pipeline is laid in the trench on the property. However, if soil or weather conditions do not permit the pipeline company to make the necessary permanent repairs within the timeframe set forth in this subsection, the pipeline company shall make the necessary permanent repairs as soon as soil and weather conditions allow.

(i) Except as provided in subsection (j), after construction of the pipeline is complete, the pipeline company is responsible for correcting all tile line repairs that:

- (1) were performed by the pipeline company during construction; and
- (2) have failed as a result of further pipeline construction activities.

(j) The pipeline company is not responsible for correcting any tile line repairs that:

- (1) are paid for by the pipeline company; and
- (2) are performed by the affected landowner or the affected landowner's agent;

at any time during or after construction.

Sec. 12. (a) This subsection applies to a pipeline that crosses agricultural land.

(b) A pipeline company shall take all reasonable actions necessary to:

- (1) alleviate soil compaction that results from the pipeline company's construction activities; and
- (2) restore the soil on an affected landowner's property to its preconstruction condition;

as prescribed in this section.

(c) After replacing the topsoil on an affected landowner's property, the pipeline company shall rip and disk all areas on the property that were traversed by vehicles or construction equipment. The pipeline company shall perform any ripping and disking required by this subsection when the soil is dry enough for normal tillage operations to occur on undisturbed agricultural land adjacent to the areas to be ripped and disked. The pipeline company shall restore all rutted land to its original condition.

(d) The cost of applying any:

- (1) fertilizer;
- (2) manure; or
- (3) lime;

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needed to restore the soil to its preconstruction condition shall be included in the damages paid by the pipeline company to the affected landowner for the easement or other interest acquired in the landowner's land. The affected landowner shall be allowed to determine the appropriate types and amounts of fertilizer, manure, or lime needed, depending on the types of crops grown and the duration of the construction activities on the land.

Sec. 13. (a) After construction of a pipeline is complete, the pipeline company shall take all reasonable actions necessary to restore an affected landowner's property to its preconstruction elevation and contour if:

- (1) uneven settling occurs; or
  - (2) surface drainage problems develop;
- on the property as a result of the construction.

(b) An affected landowner who discovers:

- (1) uneven settling; or
  - (2) surface drainage problems;
- on the landowner's property after construction is complete, must give the pipeline company written notice of the conditions or problems discovered if the landowner seeks to have the pipeline company correct the conditions or problems.

(c) Not later than forty-five (45) days after receiving notice from an affected landowner under subsection (b), a pipeline company shall provide land leveling services to correct the conditions or problems described in the notice. However, if soil or weather conditions do not permit the pipeline company to provide the necessary land leveling services within the timeframe set forth in this subsection, the pipeline company shall provide the necessary land leveling services as soon as soil and weather conditions allow.

Sec. 14. If a pipeline company determines that it is necessary to remove one (1) or more trees from an affected landowner's property for the construction of a pipeline, regardless of whether the trees are located in the pipeline company's right of way or on another part of the property, the pipeline company shall notify the landowner of the planned removal. If the trees to be removed are of commercial or other value to the affected landowner:

- (1) the affected landowner retains ownership of the trees; and
- (2) the pipeline company shall negotiate with the affected landowner concerning disposition of the trees before the commencement of any removal activities.

Sec. 15. (a) This section applies to a pipeline that crosses agricultural land.

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(b) If, during the construction of a pipeline:

(1) the pipeline; or

(2) any temporary work sites or construction areas;

cross an operational spray irrigation system on an affected landowner's property, the pipeline company shall negotiate with the affected landowner to establish an acceptable amount of time that the irrigation system may be out of service.

(c) If, as a result of pipeline construction activities:

(1) there is an interruption in the affected landowner's irrigation system; and

(2) the interruption results in damage to crops on the affected landowner's property, regardless of whether the crops are located:

(A) in the pipeline company's right-of-way; or

(B) on another part of the property;

the pipeline company shall compensate the affected landowner for the landowner's reasonable damages.

(d) If it is:

(1) feasible; and

(2) mutually acceptable to the pipeline company and the affected landowner;

temporary measures shall be implemented to allow an irrigation system to continue to operate on the part of the landowner's property on which the pipeline is being constructed.

Sec. 16. (a) Before a pipeline company begins construction of a pipeline on an affected landowner's property, the pipeline company shall negotiate with the affected landowner to reach a mutually acceptable agreement on the route that will be used to access the pipeline company's temporary or permanent easements on the landowner's property if access to the easements is not practical or feasible from:

(1) adjacent segments of the pipeline right-of-way; or

(2) a public highway or railroad right-of-way.

(b) Before a pipeline company begins construction of a pipeline on an affected landowner's property, the pipeline company shall negotiate with the affected landowner to determine the location of any temporary roads that will be used in connection with the construction. A temporary road used by the pipeline company for construction purposes shall:

(1) be designed so that it does not impede surface drainage from the affected landowner's property; and

(2) be built to minimize soil erosion on or near the temporary

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road.

Upon abandonment, a temporary road may be left intact by mutual agreement of the affected landowner and the pipeline company, unless prohibited by any federal, state, or local law or regulation.

Sec. 17. If a pipeline company has rights to the surface use of a right-of-way, including any:

- (1) valve sites;
- (2) metering stations;
- (3) compression stations; or
- (4) other locations in which pipeline facilities or appurtenances are located;

the pipeline company shall provide for weed control in a manner that prevents the spread of weeds onto adjacent agricultural lands.

Sec. 18. (a) Except as provided in subsection (b), if it becomes necessary for a pipeline company to pump water from an open trench in connection with the pipeline company's construction activities, the pipeline company shall pump the water in a manner that will not:

- (1) inundate adjacent crops for more than twenty-four (24) hours;
- (2) deposit sediment in ditches or water courses;
- (3) deposit:
  - (A) subsoil sediment; or
  - (B) gravel;
 in fields or pasture land; or
- (4) otherwise damage adjacent crops, pasture land, or other agricultural land.

(b) If it is impossible for the pipeline company to avoid any of the damages described in subsection (a), the pipeline company shall:

- (1) compensate the affected landowner for the landowner's reasonable damages; or
- (2) correct the damages so as to restore the affected land to its preconstruction condition.

Sec. 19. (a) As used in this section, "affected landowner" includes the heirs, successors, legal representatives, and assigns of an affected landowner.

(b) A pipeline company shall indemnify an affected landowner from and against any claims or damages resulting from or arising out of:

- (1) the pipeline company's construction, maintenance, operation, repair, removal, or use of pipeline on the affected

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landowner's property; or

(2) the existence of the pipeline on the affected landowner's property;

except for claims or damages resulting from or arising out of the affected landowner's negligence, intentional acts, or willful omissions.

Sec. 20. (a) Not later than forty-five (45) days before beginning construction on an affected landowner's property, a pipeline company shall provide the affected landowner with a toll free telephone number that the landowner can call to report any construction activities or repairs that:

(1) are performed by the pipeline company on the affected landowner's property; and

(2) violate, or appear to the landowner to violate, any provisions of this chapter.

(b) A pipeline company shall provide an affected landowner at least twenty-four (24) hours advance notice before entering the landowner's property to begin construction of the pipeline. This subsection does not affect a pipeline company's duties under IC 32-24-1-3(g) that apply:

(1) before the pipeline company acquires an easement or other interest in the landowner's property under IC 32-24; and

(2) in connection with the pipeline company's entry upon the landowner's property for the purpose of surveying or examining the property.

Sec. 21. (a) Except as otherwise:

(1) provided in this chapter; or

(2) agreed to by the pipeline company and an affected landowner;

any mitigative action required to be performed by a pipeline company under this chapter shall be performed not later than forty-five (45) days after the completion of construction activities on the affected landowner's property. However, if soil or weather conditions do not permit the pipeline company to perform a required mitigative action within the timeframe set forth in this subsection, the pipeline company shall perform the required action as soon as soil and weather conditions allow.

(b) Except as otherwise agreed to by the pipeline company and an affected landowner, a pipeline company's duty to perform any mitigative action required by this chapter:

(1) extends beyond the initial construction of the pipeline on the affected landowner's property; and

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(2) includes the duty to repair or correct damages caused by the pipeline company during future construction, operation, maintenance, and repair activities related to the pipeline.

(c) The pipeline company shall implement all mitigative actions required by this chapter to the extent the actions do not conflict with the requirements of:

(1) any federal, state, or local regulations or rules; or

(2) any permits or approvals obtained by the pipeline company in connection with the pipeline construction project.

(d) A pipeline company shall include a statement of its duty to adhere to the standards set forth in this chapter in any:

(1) environmental assessment; or

(2) environmental impact statement;

prepared in connection with a pipeline construction project.

**Sec. 22.** Notwithstanding the standards set forth in this chapter, an affected landowner is entitled to negotiate for different construction standards with a pipeline company in the course of:

(1) any negotiations involved in establishing a price for any:

(A) easement; or

(B) other interest in land;

needed by the pipeline company to construct the pipeline across the affected landowner's property; or

(2) any other negotiations voluntarily entered into by the pipeline company and the affected landowner.

**Sec. 23.** The provisions of this chapter are severable as provided in IC 1-1-1-8(b).

SECTION 2. IC 8-1-22.7 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

**Chapter 22.7. Monitoring of Pipeline Construction Projects**

**Sec. 1.** The definitions in IC 8-1-22.6 apply throughout this chapter.

**Sec. 2.** As used in this chapter, "division" refers to the pipeline safety division of the Indiana utility regulatory commission established by IC 8-1-22.5-2.

**Sec. 3.** For each proposed or ongoing pipeline project in Indiana, the director of the division shall designate one (1) or more employees of the division to serve as project coordinators for the division. The director shall ensure that one (1) or more of the coordinators designated under this section are responsible for the following duties concerning the project:

(1) Monitoring all:

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- (A) filings with; and
- (B) proceedings before;
- the Federal Energy Regulatory Commission.
- (2) Attending all public hearings or meetings concerning the project that are held in Indiana.
- (3) Receiving and responding to questions and complaints about the project from Indiana residents.
- (4) Updating the information required to be made available on the commission's web site under section 4 of this chapter.
- (5) Any other duties assigned by the director of the division.

Sec. 4. (a) The division shall make the following available on the commission's web site:

- (1) A link to the pipeline construction standards set forth in IC 8-1-22.6.
- (2) For each proposed or ongoing pipeline construction project in Indiana, the following information:
  - (A) A description of the pipeline company and the pipeline project, including:
    - (i) the pipeline's location, purpose, and construction schedule; and
    - (ii) the docket number assigned to the project by the Federal Energy Regulatory Commission.
  - (B) Contact information for the pipeline company, including a local or toll free telephone number.
  - (C) Contact information for the Federal Energy Regulatory Commission, including a local or toll free telephone number.
  - (D) Contact information for the one (1) or more project coordinators designated under section 3 of this chapter to receive and respond to questions and complaints from Indiana residents.
  - (E) Information on public hearings or meetings that are scheduled in connection with the pipeline project.
  - (F) Other information concerning the pipeline project that the division considers relevant or of likely concern to Indiana residents.

(b) The division shall update the information required under subsection (a)(2) on a regular basis throughout the course of a pipeline project. The division shall ensure that all information on the division's web site concerning a pipeline project is accurate, current, and accessible. The director of the division shall assign the responsibility of complying with this subsection to one (1) or more

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1 **project coordinators designated under section 3 of this chapter.**

2 SECTION 3. IC 32-24-1-3, AS AMENDED BY P.L.163-2006,  
3 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
4 UPON PASSAGE]: Sec. 3. (a) Any person that may exercise the power  
5 of eminent domain for any public use under any statute may exercise  
6 the power only in the manner provided in this article, except as  
7 otherwise provided by law.

8 **(b) Except as provided in subsection (g),** before proceeding to  
9 condemn, the person:

10 (1) may enter upon any land to examine and survey the property  
11 sought to be acquired; and

12 (2) must make an effort to purchase for the use intended the land,  
13 right-of-way, easement, or other interest, in the property.

14 (c) The effort to purchase under subsection (b)(2) must include the  
15 following:

16 (1) Establishing a proposed purchase price for the property.

17 (2) Providing the owner of the property with an appraisal or other  
18 evidence used to establish the proposed purchase price.

19 (3) Conducting good faith negotiations with the owner of the  
20 property.

21 (d) If the land or interest in the land, or property or right is owned  
22 by a person who is an incapacitated person (as defined in  
23 IC 29-3-1-7.5) or less than eighteen (18) years of age, the person  
24 seeking to acquire the property may purchase the property from the  
25 guardian of the incapacitated person or person less than eighteen (18)  
26 years of age. If the purchase is approved by the court appointing the  
27 guardian and the approval is written upon the face of the deed, the  
28 conveyance of the property purchased and the deed made and approved  
29 by the court are valid and binding upon the incapacitated person or  
30 persons less than eighteen (18) years of age.

31 (e) The deed given, when executed instead of condemnation,  
32 conveys only the interest stated in the deed.

33 (f) If property is taken by proceedings under this article, the entire  
34 fee simple title may be taken and acquired.

35 **(g) This subsection applies to a public utility (as defined in**  
36 **IC 32-24-1-5.9(a)) or a pipeline company (as defined in**  
37 **IC 8-1-22.6-7). If a public utility or a pipeline company seeks to**  
38 **acquire land or an interest in land under this article, the public**  
39 **utility or pipeline company may not enter upon the land to examine**  
40 **or survey the property sought to be acquired unless either of the**  
41 **following occur:**

42 **(1) The public utility or the pipeline company sends notice by**

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1 certified mail to the affected landowner (as defined in  
2 IC 8-1-22.6-2) of the public utility's or the pipeline company's  
3 intention to enter upon the landowner's property for survey  
4 purposes. The notice required by this subdivision must be  
5 mailed not later than fourteen (14) days before the date of the  
6 public utility's or the pipeline company's proposed  
7 examination or survey.

8 (2) The public utility or the pipeline company receives the  
9 landowner's signed consent to enter the property to perform  
10 the proposed examination or survey.

11 An affected landowner may bring an action to enforce this  
12 subsection in the circuit court of the county in which the  
13 landowner's property is located. A prevailing landowner is entitled  
14 to the landowner's actual damages as a result of the public utility's  
15 or the pipeline company's violation. In addition, the court may  
16 award a prevailing landowner reasonable costs of the action and  
17 attorney's fees.

18 SECTION 4. An emergency is declared for this act.

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## SENATE MOTION

Madam President: I move that Senator Lawson C be added as second author and Senator Bray be added as coauthor of Senate Bill 529.

JACKMAN

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 COMMITTEE REPORT

Madam President: The Senate Committee on Utilities and Regulatory Affairs, to which was referred Senate Bill No. 529, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 5 through 17, begin a new paragraph, and insert:

**"Sec. 1. (a) This chapter applies to the construction of any segment of an interstate pipeline on privately owned land in Indiana.**

**(b) Except for the standards set forth in section 11 of this chapter, this chapter does not apply to construction activities that occur entirely on:**

- (1) a public right-of-way;**
- (2) a railroad right-of-way; or**
- (3) publicly owned land.**

**Sec. 2. As used in this chapter, "affected landowner" means an affected landowner (as defined in 18 CFR 157.6(d)(2)) who owns:**

- (1) real property; or**
- (2) an interest in real property;**

**in Indiana.**

**Sec. 3. As used in this chapter, "agricultural land" means land that is:**

- (1) assessed as agricultural land for property taxes purposes;**
- (2) zoned or otherwise designated as agricultural land;**
- (3) used for growing crops or raising livestock; or**
- (4) reserved for conservation under a government program.**

**Sec. 4. As used in this chapter, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.**

**Sec. 5. (a) "Construction" or "construction activity" means the physical work involved in the construction, reconstruction, improvement, maintenance, or extension of a pipeline project.**

**(b) The term includes the following:**

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- (1) The preparation of the construction site.
- (2) Disassembling and removing a structure.
- (3) Related work.

**Sec. 6.** As used in this chapter, "pipeline" means a pipeline (as defined in IC 8-1-22.5-1(c)) that crosses or is located in:

- (1) Indiana; and
- (2) one (1) or more other states.

**Sec. 7. (a)** As used in this chapter, "pipeline company " means a person (as defined in IC 8-1-22.5-1(e)) that:

- (1) constructs; or
- (2) proposes to construct;

a pipeline.

**(b)** The term includes any:

- (1) employee;
- (2) agent;
- (3) contractor;
- (4) subcontractor;
- (5) or other person;

that is employed by, or acts on behalf of, a pipeline company.

**Sec. 8.** Except as otherwise provided in this chapter, and to the extent not preempted by federal law, a pipeline company shall adhere to the standards set forth in this chapter in constructing a pipeline, or any segment of a pipeline, in Indiana.

**Sec. 9. (a)** A pipeline company shall bury the pipeline at the following minimum depths:

- (1) Except as provided in subdivision (3), with at least five (5) feet of top cover, in a location in which the pipeline crosses any of the following types of land:

**(A)** Land that is used for crops.

**(B)** Land that:

- (i) is used as pasture land; and
- (ii) is comprised of soils that are classified by the United States Department of Agriculture as prime soils.

**(C)** Land that:

- (i) is used as other agricultural land; and
- (ii) is comprised of soils that are classified by the United States Department of Agriculture as prime soils.

- (2) Except as provided in subdivision (3), with at least three

- (3) feet of top cover, in a location in which the pipeline crosses any of the following types of land:

**(A)** Land that:

- (i) is used as pasture land; and

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(ii) is not comprised of soils that are classified by the United States Department of Agriculture as prime soils.

(B) Land that:

(i) is used as other agricultural land; and

(ii) is not comprised of soils that are classified by the United States Department of Agriculture as prime soils.

(C) Land that is wooded or brushy land.

(D) All other classifications of land.

(3) With at least thirty (30) inches of top cover, in an area in which:

(A) rock in its natural formation; or

(B) a continuous strata of gravel exceeding two hundred (200) feet in length;

is encountered.

(b) If weights are required to keep a pipeline or segment of pipeline in place, the pipeline company shall bury the pipeline at the depth necessary to maintain the depth of top cover above the weights that is required under subsection (a) for the particular type of land on which the weights are located.

(c) If a pipeline or segment of pipeline crosses agricultural land that is subject to erosion, the pipeline company shall patrol the pipeline right-of-way with reasonable frequency to detect erosion of the top cover. Except as provided in subsection (a)(3), the pipeline company shall not knowingly allow the depth of the top cover to be less than thirty-six (36) inches as a result of natural erosion. In addition, any soil conservation practices used on agricultural land before the construction of the pipeline, including terraces and grassed waterways, shall be restored by the pipeline company to their preconstruction condition.

Sec. 10. (a) In performing any excavation in connection with the construction or burial of a pipeline, a pipeline company shall segregate any topsoil removed during the excavation from any subsoil materials removed during the excavation, as prescribed by this section.

(b) The pipeline company shall strip the actual depth of the topsoil, not to exceed thirty-six (36) inches, from:

(1) the area to be excavated above the pipeline; and

(2) the adjacent subsoil storage area.

The topsoil removed must be stored in a windrow parallel to the pipeline trench in such a manner that it will not become intermixed with subsoil materials.

(c) Any subsoil materials that are removed from the pipeline

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trench during the excavation must be placed in a windrow that is:

- (1) parallel to the pipeline trench; and
- (2) separate from the topsoil windrow described in subsection (b).

(d) Subject to subsection (e), in backfilling the pipeline trench, the pipeline company shall place the stockpiled subsoil material described in subsection (c) into the trench before replacing the stockpiled topsoil described in subsection (b).

(e) Before replacing the topsoil, the pipeline company shall remove all rocks greater than three (3) inches in any dimension from:

- (1) the surface of all subsoil; and
- (2) all subsoil that is replaced in the trench.

In replacing the topsoil, the pipeline company shall remove all rocks greater than three (3) inches in any dimension from the topsoil.

(f) This subsection applies whenever a pipeline company:

- (1) performs an excavation in connection with the construction or burial of a pipeline, as described in subsection (a); or
- (2) excavates land for a road, stream, drainage ditch, or other crossing.

After performing the excavation, the pipeline company shall replace the topsoil in such a manner that after settling occurs, the topsoil's original depth and contour will be restored.

Sec. 11. (a) A pipeline company shall take all reasonable actions necessary to prevent or remedy damage to underground drainage tiles during the construction of a pipeline, as prescribed by this section.

(b) Before installing any pipeline, the pipeline company shall make a reasonable effort to locate any tile lines within the pipeline's right-of-way. Any tile lines identified under this subsection shall be staked or flagged before construction.

(c) In installing a pipeline, the pipeline company shall maintain a minimum of one (1) foot of separation between the pipeline and any tile line that is crossed by the pipeline, regardless of whether the pipeline passes over or under the tile line. The pipeline company shall ensure that the tile line's original alignment and gradient are maintained.

(d) Any tile line that is damaged, cut, or removed during construction activities shall be staked or flagged so that the stakes or flags:

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(1) are visibly distinct from the preconstruction markings made under subsection (b); and

(2) remain visible until permanent repairs are made.

(e) If a tile line that contains flowing water is damaged, the pipeline company shall immediately repair the tile line. A repair made under this subsection may be temporary in nature if a permanent repair cannot be made immediately. However, the pipeline company shall make permanent repairs to the tile line as soon as is reasonably possible.

(f) Before completing any permanent tile line repairs, the pipeline company shall:

(1) probe; or

(2) examine by other suitable means;

all tile lines located within any construction sites or other work areas. The pipeline company shall probe or examine the tile lines on both sides of the pipeline trench for the entire length of the tile lines to determine whether any tile has been damaged by vehicular traffic or construction equipment. If the pipeline company discovers damaged tile lines, the pipeline company shall repair the damaged tile lines so that the tile lines operate as well after construction activities are complete as they did before construction began.

(g) The pipeline company is responsible for:

(1) installing any additional drainage tiles; and

(2) taking any additional drainage measures;

that are necessary to properly drain wet areas on the temporary and permanent easements acquired by the pipeline company in connection with the construction and maintenance of a pipeline across an affected landowner's property.

(h) The pipeline company shall make any necessary permanent repairs to damaged tile lines on an affected landowner's property not later than fourteen (14) days after the pipeline is laid in the trench on the property. However, if soil or weather conditions do not permit the pipeline company to make the necessary permanent repairs within the timeframe set forth in this subsection, the pipeline company shall make the necessary permanent repairs as soon as soil and weather conditions allow.

(i) Except as provided in subsection (j), after construction of the pipeline is complete, the pipeline company is responsible for correcting all tile line repairs that:

(1) were performed by the pipeline company during construction; and

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(2) have failed as a result of further pipeline construction activities.

(j) The pipeline company is not responsible for correcting any tile line repairs that:

- (1) are paid for by the pipeline company; and
- (2) are performed by the affected landowner or the affected landowner's agent;

at any time during or after construction.

Sec. 12. (a) This subsection applies to a pipeline that crosses agricultural land.

(b) A pipeline company shall take all reasonable actions necessary to:

- (1) alleviate soil compaction that results from the pipeline company's construction activities; and
- (2) restore the soil on an affected landowner's property to its preconstruction condition;

as prescribed in this section.

(c) After replacing the topsoil on an affected landowner's property, the pipeline company shall rip and disk all areas on the property that were traversed by vehicles or construction equipment. The pipeline company shall perform any ripping and disking required by this subsection when the soil is dry enough for normal tillage operations to occur on undisturbed agricultural land adjacent to the areas to be ripped and disked. The pipeline company shall restore all rutted land to its original condition.

(d) The cost of applying any:

- (1) fertilizer;
- (2) manure; or
- (3) lime;

needed to restore the soil to its preconstruction condition shall be included in the damages paid by the pipeline company to the affected landowner for the easement or other interest acquired in the landowner's land. The affected landowner shall be allowed to determine the appropriate types and amounts of fertilizer, manure, or lime needed, depending on the types of crops grown and the duration of the construction activities on the land.

Sec. 13. (a) After construction of a pipeline is complete, the pipeline company shall take all reasonable actions necessary to restore an affected landowner's property to its preconstruction elevation and contour if:

- (1) uneven settling occurs; or
- (2) surface drainage problems develop;

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on the property as a result of the construction.

(b) An affected landowner who discovers:

- (1) uneven settling; or
- (2) surface drainage problems;

on the landowner's property after construction is complete, must give the pipeline company written notice of the conditions or problems discovered if the landowner seeks to have the pipeline company correct the conditions or problems.

(c) Not later than forty-five (45) days after receiving notice from an affected landowner under subsection (b), a pipeline company shall provide land leveling services to correct the conditions or problems described in the notice. However, if soil or weather conditions do not permit the pipeline company to provide the necessary land leveling services within the timeframe set forth in this subsection, the pipeline company shall provide the necessary land leveling services as soon as soil and weather conditions allow.

Sec. 14. If a pipeline company determines that it is necessary to remove one (1) or more trees from an affected landowner's property for the construction of a pipeline, regardless of whether the trees are located in the pipeline company's right of way or on another part of the property, the pipeline company shall notify the landowner of the planned removal. If the trees to be removed are of commercial or other value to the affected landowner:

- (1) the affected landowner retains ownership of the trees; and
- (2) the pipeline company shall negotiate with the affected landowner concerning disposition of the trees before the commencement of any removal activities.

Sec. 15. (a) This section applies to a pipeline that crosses agricultural land.

(b) If, during the construction of a pipeline:

- (1) the pipeline; or
- (2) any temporary work sites or construction areas;

cross an operational spray irrigation system on an affected landowner's property, the pipeline company shall negotiate with the affected landowner to establish an acceptable amount of time that the irrigation system may be out of service.

(c) If, as a result of pipeline construction activities:

- (1) there is an interruption in the affected landowner's irrigation system; and
- (2) the interruption results in damage to crops on the affected landowner's property, regardless of whether the crops are located:

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(A) in the pipeline company's right-of-way; or

(B) on another part of the property;

the pipeline company shall compensate the affected landowner for the landowner's reasonable damages.

(d) If it is:

(1) feasible; and

(2) mutually acceptable to the pipeline company and the affected landowner;

temporary measures shall be implemented to allow an irrigation system to continue to operate on the part of the landowner's property on which the pipeline is being constructed.

Sec. 16. (a) Before a pipeline company begins construction of a pipeline on an affected landowner's property, the pipeline company shall negotiate with the affected landowner to reach a mutually acceptable agreement on the route that will be used to access the pipeline company's temporary or permanent easements on the landowner's property if access to the easements is not practical or feasible from:

(1) adjacent segments of the pipeline right-of-way; or

(2) a public highway or railroad right-of-way.

(b) Before a pipeline company begins construction of a pipeline on an affected landowner's property, the pipeline company shall negotiate with the affected landowner to determine the location of any temporary roads that will be used in connection with the construction. A temporary road used by the pipeline company for construction purposes shall:

(1) be designed so that it does not impede surface drainage from the affected landowner's property; and

(2) be built to minimize soil erosion on or near the temporary road.

Upon abandonment, a temporary road may be left intact by mutual agreement of the affected landowner and the pipeline company, unless prohibited by any federal, state, or local law or regulation.

Sec. 17. If a pipeline company has rights to the surface use of a right-of-way, including any:

(1) valve sites;

(2) metering stations;

(3) compression stations; or

(4) other locations in which pipeline facilities or appurtenances are located;

the pipeline company shall provide for weed control in a manner that prevents the spread of weeds onto adjacent agricultural lands.

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**Sec. 18. (a)** Except as provided in subsection (b), if it becomes necessary for a pipeline company to pump water from an open trench in connection with the pipeline company's construction activities, the pipeline company shall pump the water in a manner that will not:

- (1) inundate adjacent crops for more than twenty-four (24) hours;
- (2) deposit sediment in ditches or water courses;
- (3) deposit:
  - (A) subsoil sediment; or
  - (B) gravel;
 in fields or pasture land; or
- (4) otherwise damage adjacent crops, pasture land, or other agricultural land.

**(b)** If it is impossible for the pipeline company to avoid any of the damages described in subsection (a), the pipeline company shall:

- (1) compensate the affected landowner for the landowner's reasonable damages; or
- (2) correct the damages so as to restore the affected land to its preconstruction condition.

**Sec. 19. (a)** As used in this section, "affected landowner" includes the heirs, successors, legal representatives, and assigns of an affected landowner.

**(b)** A pipeline company shall indemnify an affected landowner from and against any claims or damages resulting from or arising out of:

- (1) the pipeline company's construction, maintenance, operation, repair, removal, or use of pipeline on the affected landowner's property; or
- (2) the existence of the pipeline on the affected landowner's property;

except for claims or damages resulting from or arising out of the affected landowner's negligence, intentional acts, or willful omissions.

**Sec. 20. (a)** Not later than forty-five (45) days before beginning construction on an affected landowner's property, a pipeline company shall provide the affected landowner with a toll free telephone number that the landowner can call to report any construction activities or repairs that:

- (1) are performed by the pipeline company on the affected landowner's property; and

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(2) violate, or appear to the landowner to violate, any provisions of this chapter.

(b) A pipeline company shall provide an affected landowner at least twenty-four (24) hours advance notice before entering the landowner's property to begin construction of the pipeline. This subsection does not affect a pipeline company's duties under IC 32-24-1-3(g) that apply:

- (1) before the pipeline company acquires an easement or other interest in the landowner's property under IC 32-24; and
- (2) in connection with the pipeline company's entry upon the landowner's property for the purpose of surveying or examining the property.

Sec. 21. (a) Except as otherwise:

- (1) provided in this chapter; or
- (2) agreed to by the pipeline company and an affected landowner;

any mitigative action required to be performed by a pipeline company under this chapter shall be performed not later than forty-five (45) days after the completion of construction activities on the affected landowner's property. However, if soil or weather conditions do not permit the pipeline company to perform a required mitigative action within the timeframe set forth in this subsection, the pipeline company shall perform the required action as soon as soil and weather conditions allow.

(b) Except as otherwise agreed to by the pipeline company and an affected landowner, a pipeline company's duty to perform any mitigative action required by this chapter:

- (1) extends beyond the initial construction of the pipeline on the affected landowner's property; and
- (2) includes the duty to repair or correct damages caused by the pipeline company during future construction, operation, maintenance, and repair activities related to the pipeline.

(c) The pipeline company shall implement all mitigative actions required by this chapter to the extent the actions do not conflict with the requirements of :

- (1) any federal, state, or local regulations or rules; or
- (2) any permits or approvals obtained by the pipeline company in connection with the pipeline construction project.

(d) A pipeline company shall include a statement of its duty to adhere to the standards set forth in this chapter in any:

- (1) environmental assessment; or
- (2) environmental impact statement;

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prepared in connection with a pipeline construction project.

**Sec. 22.** Notwithstanding the standards set forth in this chapter, an affected landowner is entitled to negotiate for different construction standards with a pipeline company in the course of:

(1) any negotiations involved in establishing a price for any:

(A) easement; or

(B) other interest in land;

needed by the pipeline company to construct the pipeline across the affected landowner's property; or

(2) any other negotiations voluntarily entered into by the pipeline company and the affected landowner.

**Sec. 23.** The provisions of this chapter are severable as provided in IC 1-1-1-8(b).".

Delete pages 2 through 6.

Page 7, delete lines 1 through 21, begin a new paragraph and insert:  
"SECTION 2. IC 8-1-22.7 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

**Chapter 22.7. Monitoring of Pipeline Construction Projects**

**Sec. 1.** The definitions in IC 8-1-22.6 apply throughout this chapter.

**Sec. 2.** As used in this chapter, "division" refers to the pipeline safety division of the Indiana utility regulatory commission established by IC 8-1-22.5-2.".

Page 7, line 22, delete "10." and insert "3.".

Page 7, delete lines 34 through 37.

Page 7, line 38, delete "(4)" and insert "(3)".

Page 7, line 40, delete "(5)" and insert "(4)".

Page 7, line 41, delete "12" and insert "4".

Page 7, line 42, delete "(6)" and insert "(5)".

Page 8, delete lines 1 through 17.

Page 8, line 18, delete "12." and insert "4.".

Page 8, line 20, delete "The standards adopted by the division under section 7 of" and insert "A link to the pipeline construction standards set forth in IC 8-1-22.6.".

Page 8, delete line 21.

Page 8, line 36, delete "10" and insert "3".

Page 8, delete lines 39 through 42.

Page 9, delete lines 1 through 7.

Page 9, line 8, delete "(F)" and insert "(E)".

Page 9, line 10, delete "(G)" and insert "(F)".

Page 9, delete lines 13 through 17.

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Page 9, line 18, delete "(c)" and insert "**(b)**".

Page 9, line 24, delete "10" and insert "**3**".

Page 9, delete lines 25 through 42.

Page 10, delete lines 1 through 20, begin a new paragraph and insert:

"SECTION 3. IC 32-24-1-3, AS AMENDED BY P.L.163-2006, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) Any person that may exercise the power of eminent domain for any public use under any statute may exercise the power only in the manner provided in this article, except as otherwise provided by law.

(b) **Except as provided in subsection (g)**, before proceeding to condemn, the person:

- (1) may enter upon any land to examine and survey the property sought to be acquired; and
- (2) must make an effort to purchase for the use intended the land, right-of-way, easement, or other interest, in the property.

(c) The effort to purchase under subsection (b)(2) must include the following:

- (1) Establishing a proposed purchase price for the property.
- (2) Providing the owner of the property with an appraisal or other evidence used to establish the proposed purchase price.
- (3) Conducting good faith negotiations with the owner of the property.

(d) If the land or interest in the land, or property or right is owned by a person who is an incapacitated person (as defined in IC 29-3-1-7.5) or less than eighteen (18) years of age, the person seeking to acquire the property may purchase the property from the guardian of the incapacitated person or person less than eighteen (18) years of age. If the purchase is approved by the court appointing the guardian and the approval is written upon the face of the deed, the conveyance of the property purchased and the deed made and approved by the court are valid and binding upon the incapacitated person or persons less than eighteen (18) years of age.

(e) The deed given, when executed instead of condemnation, conveys only the interest stated in the deed.

(f) If property is taken by proceedings under this article, the entire fee simple title may be taken and acquired.

**(g) This subsection applies to a public utility (as defined in IC 32-24-1-5.9(a)) or a pipeline company (as defined in IC 8-1-22.6-7). If a public utility or a pipeline company seeks to acquire land or an interest in land under this article, the public**

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utility or pipeline company may not enter upon the land to examine or survey the property sought to be acquired unless either of the following occur:

(1) The public utility or the pipeline company sends notice by certified mail to the affected landowner (as defined in IC 8-1-22.6-2) of the public utility's or the pipeline company's intention to enter upon the landowner's property for survey purposes. The notice required by this subdivision must be mailed not later than fourteen (14) days before the date of the public utility's or the pipeline company's proposed examination or survey.

(2) The public utility or the pipeline company receives the landowner's signed consent to enter the property to perform the proposed examination or survey.

An affected landowner may bring an action to enforce this subsection in the circuit court of the county in which the landowner's property is located. A prevailing landowner is entitled to the landowner's actual damages as a result of the public utility's or the pipeline company's violation. In addition, the court may award a prevailing landowner reasonable costs of the action and attorney's fees."

Page 10, line 21, delete "2." and insert "3."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 529 as introduced.)

HERSHMAN, Chairperson

Committee Vote: Yeas 9, Nays 0.

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